

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED

JAN 16 2020

Clerk, U.S. District Court
District Of Montana
Missoula

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

VICTOR FOURSTAR, JR.,

Defendant/Movant.

Cause No. CR 02-52-GF-DLC

ORDER DENYING RULE 59
MOTION AND DENYING
CERTIFICATE OF
APPEALABILITY

On January 6, 2020, the Court dismissed Defendant Fourstar's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 324) because the revocation judgment he challenges in the § 2255 motion is currently before the Ninth Circuit Court of Appeals on direct review. *See* Order (Doc. 325); *see also United States v. Fourstar*, No. 19-30200 (9th Cir. filed Aug. 29, 2019).

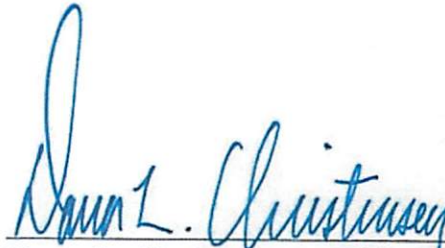
Fourstar now moves to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). Any non-frivolous allegations, *see* Rule 59 Mot. (Doc. 326) at 1–2, may be raised on direct review, or they are properly deferred to collateral review after direct review concludes, *see, e.g., United States v. Pirro*, 104 F.3d 297, 299–300 (9th Cir. 1997), or they are not properly brought in a § 2255 motion. Fourstar identifies no sound reason to alter or amend the dismissal of his § 2255 motion in favor of the pending direct appeal.

A certificate of appealability is not warranted. *See Gonzalez v. Thaler*, 565 U.S. 134, 140–41 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS ORDERED:

1. Fourstar's Rule 59 motion (Doc. 326) is DENIED.
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Fourstar files a Notice of Appeal.

DATED this 16th day of January, 2020.



Dana L. Christensen, Chief District Judge
United States District Court